



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR-003]

Notice of Petition for Waiver of Hussmann from the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver and application for interim waiver from Hussmann, Inc. (Hussmann) (hereafter, “petition”) from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of commercial refrigerators, freezers and refrigerator-freezers. Today’s notice also grants an interim waiver to Hussmann from the commercial refrigerator, freezer and refrigerator-freezer test procedure. Through this notice, DOE also solicits comments with respect to the Hussmann petition.

DATES: DOE will accept comments, data, and information with respect to the Hussmann petition until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by case number CR-003, by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: AS_Waiver_Requests@ee.doe.gov. Include “Case No. CR-003” in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J/1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.
- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L’Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L’Enfant Plaza SW., Washington, DC, 20024; (202) 586-2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) this notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE

rulemakings and waivers regarding commercial refrigeration equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. E-mail: AS_Waiver_Requests@ee.doe.gov.

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 287-6111. E-mail: Jennifer.Tiedeman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6311-6317 (“sections 6311-6314”)), established the Energy Conservation Program for certain industrial equipment, which includes commercial refrigeration equipment, the focus of this notice.¹ Part C specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers. (42

¹ For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A-1.

U.S.C. 6316) With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

Section 6314(a)(6)(C) of EPCA directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 6313(c)(4), including (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 6314(a)(6) provide DOE with additional authority to establish and amend test procedures for commercial refrigeration equipment. (42 U.S.C. 6314(a)(6)(C)) On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use certain sections of Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, “Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets” when measuring the energy consumption of this equipment. On January 9, 2009, DOE established energy conservation standards for certain classes of commercial refrigerators, effective January 1, 2012, and provided that the test procedures at 10 CFR 431.64 apply to that equipment. 74 FR 1092, 96. The basic models included in Hussmann’s petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and

rated according to the prescribed DOE test procedure as of January 1, 2012.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect according to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.401(e)(3). An interim waiver remains in

effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.401(e)(4).

II. Application for Interim Waiver and Petition for Waiver

On January 12, 2012, Hussmann submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64, as well as an application for interim waiver. Hussmann requested the waiver for its commercial refrigerators intended for short term display of frozen meat (separate from a frozen food case). This equipment is classified as a commercial freezer with a remote condensing unit designed for low temperature applications (category (ix)) in the table listing some of the applicable test procedure requirements at 10 CFR 431.64(b)(3)). The applicable test procedure for this equipment is specified in 10 CFR 431.64(b), which incorporates by reference ARI Standard 1200-2006, section 3, “Definitions,” section 4, “Test Requirements,” section 7, “Symbols and Subscripts,” and, section 5, “Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets.”

Hussmann seeks a waiver and interim waiver from the applicable test procedure under 10 CFR 431.64 on the grounds that its commercial freezers contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, Hussmann asserts that particular basic models of freezers are not able to operate at the specified integrated average temperature of 0 °F, which is required for testing and rating purposes. Instead, Hussmann asserts that the equipment can only operate from 8-18 °F. Consequently, Hussmann requested that DOE

grant a waiver from the applicable test procedure, allowing the specified products to be tested at an integrated average temperature of 12 °F, which Hussmann asserts is an acceptable temperature at which to test the specified basic models.

The Department articulated its position regarding basic models of commercial refrigeration equipment that are not capable of operating at the required integrated average temperature specified by the DOE test procedure in a test procedure final rule published on February 21, 2012. 77 FR 10292. Specifically, to qualify to use the lowest application product temperature for a certain piece of equipment, a manufacturer should be confident that any case tested under that equipment rating could achieve the specified lowest application product temperature within ± 2 °F and could not be tested at the rating temperature (i.e., integrated average temperature specified by the DOE test procedure) for the given equipment class. Further, in the final rule, DOE clarified that, for many pieces of equipment, the lowest application product temperature that should be used for testing will be the lowest temperature setting on the unit's thermostat. 77 FR 10292, 10303 (February 21, 2012).

DOE agrees with Hussmann's assertion that the basic models identified in its petition cannot be operated at the associated rating conditions currently specified for commercial freezers in the DOE test procedures given the available data. DOE has confirmed with Hussmann that 8°F is the lowest temperature these basic models are capable of operating would be 8°F. In light of this and DOE's position in the February 2012 final rule, DOE has concluded that Hussmann's request to test these basic models of commercial freezers at an integrated average temperature of

12°F is inappropriate. Instead, DOE has determined that the basic models of commercial freezers listed in Hussmann's petition should be tested at their lowest application product temperature as defined at 10 CFR 431.62, which corresponds to an integrated average temperature of 8°F.

DOE has determined that Hussmann's petition likely will be granted, and that it is desirable for public policy reasons to grant Hussmann relief pending a determination on the petition. DOE believes that it is likely Hussmann's petition will be granted because the refrigerators specified in Hussmann's petition are not able to operate at the specified integrated average temperature of $0^{\circ}\text{F} \pm 2^{\circ}\text{F}$. DOE previously granted interim waivers to Hill PHOENIX Inc. and Hussmann based on a similar issue pertaining to the ability to test certain of their products at the specified integrated average temperature in the DOE test procedure. (77 FR 5782, February 6, 2012 and 77 FR 4800, Jan. 31, 2012, respectively) In addition, DOE has determined that it is desirable that the energy efficiency of this equipment be tested and rated in a manner similar to other commercial refrigeration equipment while DOE considers the petition for waiver. As a result, DOE grants an interim waiver to Hussmann for the specified models of its commercial refrigerator products. Therefore, *it is ordered that*:

The application for interim waiver filed by Hussmann is hereby granted for Hussmann's specified models of commercial freezers, subject to the specifications and conditions below. Hussmann shall be required to test and rate the specified basic models according to the alternate test procedure as set forth in section III, "Alternate test procedure."

The interim waiver applies to the following basic model groups:

M1XL-4GE, M1XL-6GE, M1XL-8GE, M1XL-12GE, M1XLD-4GE, M1XLD-6GE, M1XLD-8GE, M1XLD-12GE

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hussmann may submit a petition for waiver and application for interim waiver, as appropriate, for additional models of commercial refrigerators, freezers and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR Part 429.

III. Alternate Test Procedure

As a condition for granting this interim waiver to Hussmann, DOE requires Hussmann to test the commercial refrigerators specified in its January 12, 2012 petition and listed above according to the test procedure specified at 10 CFR 431.64, except that instead of testing at the required integrated average temperature of $0 \pm 2^{\circ}\text{F}$, Hussmann shall test the specified basic models at an integrated average temperature of $8 \pm 2^{\circ}\text{F}$, which Hussmann indicated is the lowest temperature at which those models can operate.

DOE notes that it has published an amended test procedure for commercial refrigeration

equipment. (77 FR 10292, Feb. 21, 2012). The amended test procedure addresses the testing issue addressed in this waiver, requiring products to be tested at their lowest application product temperature. *Id.* Use of the amended test procedure will be required on the compliance date of any amended standards for this equipment.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Hussmann's petition for waiver from the test procedures that apply to commercial refrigerators, freezers and refrigerator-freezers. For the reasons articulated above, DOE also grants Hussmann an interim waiver from those procedures as described above. DOE is publishing Hussmann's petition for waiver in its entirety pursuant to 10 CFR 431.401(b)(1)(iv). The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Hussmann is required to follow as a condition of its interim waiver.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Ron Shebik, Compliance Manager, Hussmann Corporation, 12999 St. Charles Rock Road, Bridgeton, MO 63044. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file

format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on April 26, 2013.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

Petition for Waiver

Request for a test procedure waiver from DOE pursuant to provisions described in 10 CFR 431.401 for the following product on the grounds of “The prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data”

The design characteristics constituting the grounds for the waiver application:

- 1.1 Commercial Refrigerators shown above are intended for short term display of frozen meat (separate from a frozen food case). Food Safety testing has shown that food spoilage microbes and pathogens cease to grow at temperatures less than 34° F.
- 1.2 These commercial refrigerators are typically designed to display the meat at an Average Integrated Temperature (AIT) of 8°F – 18°F range (The amount and method of merchandising the food product varies which results in a wide range of AIT). This case is designed to display frozen meat at a higher temperature than a frozen food case (with an AIT of 0°F \pm 2°F).
- 1.3 DOE requires testing Low Temperature commercial refrigerators at an AIT of 0°F \pm 2°F.
- 1.4 In order to reduce the AIT from the existing 8°F – 18°F range to an AIT of 0°F \pm 2°F, manufacturers will have to take the following steps:
 - a) Increase energy consumption to reduce the AIT.
 - b) Significantly change the design.
 - c) Use evaporator coils that consume higher amounts of refrigerant and/or use a higher capacity coil consuming more BTU's, resulting in higher energy consumption.

Need for the requested waiver:

- 1.5 It is clear that the law requires commercial refrigerators to be tested and certified using the test procedure set forth at 10 C.F.R. Pt 431, Subpt. C, Sec. 431.64 – or be subject to a waiver – before they are sold in commerce. But DOE's test procedure which establishes the 0°F \pm 2°F AIT criteria based on the low temperature application does not contemplate commercial refrigerators that are designed to display frozen meat (an AIT of 8°F – 18°F).
- 1.6 There is no existing DOE Test Procedure without a waiver establishing an alternative test procedure for such products, there is no way to know how a model of such product should be tested, whether a model complies with the standard, and how the model's energy use compares to others with similar features.
- 1.7 Testing of commercial refrigerators intended to display frozen meat at 0°F would increase the energy consumption and defeat the intent and spirit of energy conservation set forth by DOE. (NOTE: These cases do meet the maximum energy allowance limits set forth by DOE for the applicable DOE Equipment Class with the current AIT of 8°F – 18°F range. Reducing the AIT to 0°F only for test purposes will increase the energy consumption.)

Basic Models on which the waiver is being requested:

M1XL-4GE, M1XL-6GE, M1XL-8GE, M1XL-12GE

M1XLD-4GE, M1XLD-6GE, M1XLD-8GE, M1XLD-12GE

Specific Requirements sought to be waived – Commercial Refrigerators intended to display frozen meat shall be exempt from DOE's requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt 429.

Alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption – An alternate test temperature of 12 ± 2 degrees Fahrenheit would be an acceptable test temperature.

Success of the application for waiver will: Ensure that the spirit and intent of conserving energy by DOE is followed and maintained.

What economic hardship and/or competitive disadvantage are likely to result absent a favorable determination on the Petition for Waiver – Economic hardship will be loss of sales due to not meeting the DOE requirements set forth. If the existing products were altered to meet the current DOE requirements, it would add significant cost and increase energy consumption.

Conclusion:

Husmann Corporation seeks a waiver from DOE's current requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt. 429. Such a waiver is necessary because the current prescribed test procedures produce materially inaccurate and unrepresentative data for regulatory and consumer information purposes.

Husmann Corporation respectfully asks the Department of Energy to grant a waiver from existing test standards until such time as a representative test procedure is developed and adopted for this class of products.

If we can provide further information, or if it would be helpful to discuss any of these matters further, please contact Ron Shebik, Compliance Manager, at (314) 298-6483.

Sincerely,

Ron Shebik
Compliance Manager, Husmann Corporation

12999 St. Charles Rock Road
Bridgeton, MO 63044

Certificate:

I hereby certify that I have this day served the foregoing document upon the following companies known to Hussmann Corporation to currently market systems in the United States which appear to be similar to the M1XL series & M1XLD series design:

Hill Phoenix
1003 Sigman Road
Conyers, GA 30013
Attn: Larry Howington, Engineer

Dated this 12th day of January 2012.

Ron Shebik
Compliance Manager
Hussmann Corporation
12999 St. Charles Rock Road
Bridgeton, MO 63044

Application for Interim Waiver

Request for a test procedure Interim Waiver from DOE pursuant to provisions described in 10 CFR 431.401 for the following product on the grounds of “The prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data”

The design characteristics constituting the grounds for the Interim Waiver Application:

- 1.1 Commercial Refrigerators shown above are intended for short term display of frozen meat (separate from a frozen food case). Food Safety testing has shown that food spoilage microbes and pathogens cease to grow at temperatures less than 34° F.
- 1.2 These commercial refrigerators are typically designed to display the meat at an Average Integrated Temperature (AIT) of 8°F – 18°F range (The amount and method of merchandising the food product varies which results in a wide range of AIT). This case is designed to display frozen meat at a higher temperature than a frozen food case (with an AIT of 0°F \pm 2°F).
- 1.3 DOE requires testing Low Temperature commercial refrigerators at an AIT of 0°F \pm 2°F.
- 1.4 In order to reduce the AIT from the existing 8°F – 18°F range to an AIT of 0°F \pm 2°F, manufacturers will have to take the following steps:
 - a) Increase energy consumption to reduce the AIT.
 - b) Significantly change the design.
 - c) Use evaporator coils that consume higher amounts of refrigerant and/or use a higher capacity coil consuming more BTU's, resulting in higher energy consumption.

Need for the requested Interim Waiver:

- 1.5 It is clear that the law requires commercial refrigerators to be tested and certified using the test procedure set forth at 10 C.F.R. Pt 431, Subpt. C, Sec. 431.64 – or be subject to a waiver – before they are sold in commerce. But DOE's test procedure which establishes the 0°F \pm 2°F AIT criteria based on the low temperature application does not contemplate commercial refrigerators that are designed to display frozen meat (an AIT of 8°F – 18°F).
- 1.6 There is no existing DOE Test Procedure without a waiver establishing an alternative test procedure for such products, there is no way to know how a model of such product should be tested, whether a model complies with the standard, and how the model's energy use compares to others with similar features.
- 1.7 Testing of commercial refrigerators intended to display frozen meat at 0°F would increase the energy consumption and defeat the intent and spirit of energy conservation set forth by DOE. (NOTE: These cases do meet the maximum energy allowance limits set forth by DOE for the applicable DOE Equipment Class with the

current AIT of 8°F – 18°F range. Reducing the AIT to 0°F only for test purposes will increase the energy consumption.)

Basic Models on which the Interim Waiver is being requested:

M1XL-4GE, M1XL-6GE, M1XL-8GE, M1XL-12GE

M1XLD-4GE, M1XLD-6GE, M1XLD-8GE, M1XLD-12GE

Specific Requirements sought to be waived – Commercial Refrigerators intended to display frozen meat shall be exempt from DOE’s requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt 429.

Alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption – An alternate test temperature of 12 ± 2 degrees Fahrenheit would be an acceptable test temperature.

Success of the application for Interim Waiver will: Ensure that the spirit and intent of conserving energy by DOE is followed and maintained.

What economic hardship and/or competitive disadvantage are likely to result absent a favorable determination on the Application for Interim Waiver – Economic hardship will be loss of sales due to not meeting the DOE requirements set forth. If the existing products were altered to meet the current DOE requirements, it would add significant cost and increase energy consumption.

Conclusion:

Husmann Corporation seeks an Interim Waiver from DOE’s current requirement to test and certify in accordance with 10 C.F.R Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R Pt. 429. Such a waiver is necessary because the current prescribed test procedures produce materially inaccurate and unrepresentative data for regulatory and consumer information purposes.

Husmann Corporation respectfully asks the Department of Energy to grant an Interim Waiver from existing test standards until such time as a representative test procedure is developed and adopted for this class of products.

If we can provide further information, or if it would be helpful to discuss any of these matters further, please contact Ron Shebik, Compliance Manager, at (314) 298-6483.

Sincerely,

Ron Shebik
Compliance Manager, Husmann Corporation

12999 St. Charles Rock Road
Bridgeton, MO 63044

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